



Implementing Best Practices & Educating Lawyers: Teaching Skills and Professionalism Across the Curriculum

Workshop  
4A

The Subversive Art of Teaching  
Interviewing and Counseling

*Joseph Shaub*  
*University of Washington Law School*

The Subversive Art  
of Teaching Interviewing &  
Counseling

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Why "Subversive?"

- Successful Lawyers I Have Known Display:
  - Crisp Analytical Thinking
  - Clear, Concise, Persuasive Communication
  - Comprehensive Knowledge Base
  - Ability to Relate Well to Other People
  - Self-Regard and Self-Knowledge
  - Ability to Maintain Balance
  - A Comfort with Personal Values
  - Mature Business Sense
  - Self-Mastery/Self Discipline

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From Carnegie's "Educating Lawyers"

- Establishing and maintaining trust with one's clients is, of course, essential to the effective practice of law. ..Respect and consideration for one's clients are also important contributors to that relationship.
- The danger for second- and third-year students is that the analytic blinders they have laboriously developed may never come off when they deal with the law or with clients.
- The kind of personal maturity that graduates need in order to practice law with integrity and a sense of purpose requires not only skills, but qualities such as compassion, respectfulness and commitment

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**From One Law Student:**

“...law schools create people who are smart without a purpose.”

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**Legal Practice from the Head.....  
Two Studies**

- Feldman – Emotional Intelligence and Clients’ Perceptions of Competence
- Demasio – Decision-Making is Not Simply an Analytical Exercise

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**TEACHING EMPATHY**

- The Personal Experiences Exercise
  - Factual Reflective Feedback
  - Affective Reflective Feedback
- The Emotional Literacy Exercise
- The John Barkai Empathic Feedback Exercise

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**TEACHING COUNSELING**

- The "How Do We Make Decisions?" Exercise
- An Opening for Teaching Self Knowledge
  - Rule 2.1 as a teaching tool
  - Myers-Briggs as a teaching tool
  - Holmes and Rahe's *Social Readjustment Scale* as a teaching tool
- The Gateway to Considering (and Struggling with) Personal Values
  - The Personal/Professional Mission Statement

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**QUESTIONS?**

**COMMENTS ?**

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## The Value of Interpersonal Skills in Lawyering

Stephen Feldman\* and Kent Wilson†

Noting the historical negative public perception held of attorneys, a 2 X 2 factorial design was created to assess the relative roles of legal competence and relational skill in the formation of client attitudes toward attorneys. Ninety-three subjects viewed a simulated, video-taped attorney-client interview in which the attorney possessed either (a) high legal competence and high relational skill, or (b) low legal competence and high relational skill, or (c) high legal competence and low relational skill, or (d) low legal competence and low relational skill. Analysis of questionnaires completed by the subjects after viewing the tapes revealed the attorney having high legal competence and high relational skill to be viewed as most expert, attractive, trustworthy, probable of satisfying the client, and being recommended and used in the future. The attorney having low legal competence and high relational skill was rated second on sixteen of the seventeen measures employed, indicating that relational skill contributes more to the formation of a client's perception of his or her attorney than does the attorney's level of legal competence. Implications of the results for the training of future attorneys are discussed.

*The first thing we do, let's kill all the lawyers.*

Shakespeare  
*King Henry VI, Part II, IV, ii.*

### INTRODUCTION

Hardly a post-Watergate phenomenon, negative perceptions and opinions of attorneys have long been held by the general public. Characterized as being unscrupulous, untrustworthy, and unfeeling, lawyers have proved to be a fertile source of inspiration for playwrights, authors, and comedians for centuries. Charles Dickens, for example, said bluntly, "The law is an ass." (*Bleak House*); Carl Sandburg, in *The Lawyers Know*

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*Too Much*, raised the question, "Why does a hearse horse snicker hauling a lawyer away?" And more recently, Johnny Carson has spoken of the lawyer doll, "... you wind it up and it puts its hand in your pocket; the more expensive model squeaks."

More serious and current criticism of attorneys and the legal system has been reported in the social science literature. In a two-year analysis of the perceptions of attorneys held by mid-western residents, Wilson found that while 21% of the population expressed complete confidence in attorneys, 24% stated that they have either questionable confidence or no confidence whatsoever in attorneys and the quality of their work (Wilson, 1981). Similarly, an ABC-Harris Poll of November, 1980 found that only 13% of the public has high confidence in law firms. That figure is down from 18% in 1978, and 24% in 1973 (Wall Street Journal, 2/6/81, p. 36).

While examples of the negative valuation of attorneys are easily found, discussions of the possible causes underlying this seemingly universal perception are lacking. Assuming that it is more desirable for attorneys and the legal profession to be perceived positively than negatively,<sup>1</sup> an examination of potential causes of the distrust and antagonism is merited. Three potential explanations exist.

One probable explanation is to be found in the nature of the legal system itself. It is an adversarial system which by design creates as many losers as winners. Losers are understandably embittered by their loss and would be prone to displace their anger onto the perceived object of their loss—their lawyer. But some "winners" may also feel disappointment in the system, and consequently in their lawyer, especially in those cases in which they believe their rights were not as fully protected by the law as they should have been. Divorce litigants, for example, are rarely completely happy with child support, visitation rights, and property settlement provisions of their decrees although they may have "won." The same is true of tort, contract, and property litigants, who may feel that despite the amount of their damages award they were not fully compensated for their loss. Either winning or losing a case, therefore, may create negative feelings on the part of a client toward his or her attorney and the legal system.

A second possible explanation for the low regard in which lawyers are held may lie in the public's perceiving widespread legal incompetence on the part of attorneys. In this view the client's disappointment in his or her attorney would not evolve as a by-product of either winning or losing a case, but would be directly related to a feeling on the part of the client that his or her attorney actually lacked sufficient legal training and/or skill. The development of positive attitudes toward attorneys, therefore, would be contingent on attorneys demonstrating high levels of legal skills; i.e., on their showing a thorough knowledge of relevant substantive law and an ability to use appropriate legal procedure. Failure to demonstrate such knowledge and skill would result in the attorney's being viewed as incompetent, blundering, and ineffective.

A third explanation for negative public attitudes toward attorneys concerns the personal attributes of attorneys themselves. Apart from winning or losing a case, and apart from perceiving insufficient legal skills in attorneys, a client may become angry or disillusioned with his or her attorney as the result of the nature of the personal relationship existing between them. Cold, distant, detached or condescending at-

<sup>1</sup>The issue of whether or not the legal system requires public acceptance or approval is discussed *infra*.

itudes and behaviors on the part of an attorney may serve to alienate clients and lower the probability of their returning for future assistance. Conversely, warm, open, and concerned interest shown by an attorney may foster greater client acceptance and enhance the client's perceptions of both the attorney and the legal system.

Surprisingly, the relative roles of legal skills and interpersonal relational skills in the attorney-client relationship have not been empirically examined. One possible cause for the lack of empirical investigation is that of the implicit assumption underlying legal education—that of client satisfaction being solely dependent on legal competence. An attorney's legal education is directed toward the development of rational, intellectual skills rather than interpersonal skills. The lawyer is taught to separate the problem from the person and to direct his/her efforts exclusively toward resolving the legal issue. Through offering courses in "client counseling" or "the attorney-client relationship," some law schools seem cognizant of the potential impact of the attorney's interpersonal demeanor on the client's reaction to the attorney; but such courses are rarely stressed in the law school curriculum and are never required courses.

But exactly how important are these relational skills? If the centuries of public opinion as expressed in literature and verse possess any validity, it would appear as though legal skill in and of itself has not served to engender positive feelings on the part of the public regarding attorneys and the legal system. The question then becomes whether relational skills alone, or some combination of the relational and legal skills, serves to significantly affect client perceptions of the attorney. Assuredly, legal efficiency and positive image may not be necessarily antithetical.

Perhaps the more crucial issue is that of whether the interests of the legal system are best served through providing pure legal efficiency, or through providing services which result in a positive feeling on the part of the client toward the legal system. Thurman Arnold, in *Symbols of Government* (1938), takes as his main thesis the notion of the *belief* of the public in the ability of the legal system to provide justice as the *sine qua non* of the American legal system. In Arnold's view, to the extent that the legal system fails to be perceived as doing justice the existence of the system is threatened. Yet what does justice entail: provision of legally efficient and appropriate services, creation and maintenance of positive feelings about the attorney and the legal system independent of case outcome, or both?

The current investigation seeks to examine the relative roles of legal competency and relational skills in affecting the client's perception of the attorney-client relationship. More specifically, the present study will focus on a client's expectation of a satisfying relationship and his or her inclinations to recommend and use attorney's who differ along and within the dimensions of legal competence and relational skill.

## METHOD

To examine the roles of legal competency and relational skill a two by two (2 X 2) factorial design was developed wherein subjects were exposed to a 15-minute videotape in which an attorney was seen interacting with a client in one of four modes: (a) high relational skills coupled with high legal competence, (b) high relational skills coupled with low legal competence, (c) low relational skills coupled with high legal

competence, or (d) low relational skills coupled with low legal competence. These four combinations of variables were designated treatment conditions A, B, C, and D, respectively.

Differentiating each of the four treatment conditions involved specification of patterns of behavior for each dimension of both legal competence and relational skill. Legal competence was defined as possessing knowledge of the substantive law and procedure relevant to the client's problem. An attorney possessing high legal competence, therefore, would obtain sufficient factual data to determine the specific legal issue involved, explain court jurisdiction and procedure, give practical advice, provide appropriate forms for gathering further information from the client, and explain relevant law. Conversely, an attorney low in legal competence would not take sufficient factual data, explain court jurisdiction or procedure, give practical advice, provide forms, or explain relevant law.

Behaviors characteristic of the relationally skilled attorney were formulated after a literature review of behavioral factors involved in influencing interpersonal relationships.<sup>2</sup> Based on research specifying relational skills in other settings (Strong and Schmidt, 1970; Schmidt and Strong, 1970, 1971; Dell, 1973; Dell and Schmidt, 1976) the following behaviors were incorporated into the role of the relationally skilled attorney: introducing self using first name, shaking hands, making small talk comments, letting the client talk, leaning forward, looking at the client, reflecting the client's content and affect, and appearing warm, reactive, and animated. Also based on the work of the above noted authors, the following behaviors were incorporated into the role of the relationally unskilled attorney: failure to introduce self, not shaking hands, making no small talk, talking over the conversation, sitting back in the chair, not looking at the client, not reflecting the client's content or affect, and appearing distant, aloof, and nonreactive. Table 1 lists each of the four treatment conditions and the attorney characteristics associated with each.

Prior to use, all four videotapes were screened by a psychologist and a law professor who agreed as to the appropriateness of the relational skills employed and legal competency displayed. Additionally, the tapes were presented to a group of 20 law students, who were all able to correctly identify the four conditions with 100% agreement.

This is not to say that interpersonal relationships are influenced by behavioral factors alone. Strong (1968) conceptualized interpersonal influence as a process involving the interplay of objective, behavioral, and reputation factors. Objective factors contributing to the development of a client's perception of his or her attorney would include such items as the presence of diplomas, certificates, and titles in the attorney's office. Behavioral factors affecting the client's perception would include the verbal and nonverbal attorney behaviors during the attorney-client interchange; and reputation factors would include information available to the client from external sources.

The decision to focus on the behavioral factors associated with interpersonal influence rest primarily on the belief that of the three influential factors behavior is most susceptible of being altered. Degrees and bar admission certificates (i.e., objective factors of influence) are found in most, if not all, law offices and can be considered as a fairly constant variable. Although reputation cannot be assumed to be constant across attorneys, this factor is not ordinarily capable of being rapidly altered. Reputation, it is assumed, accrues over the course of a professional's career. Furthermore, of the three influential variables, only behavior is amenable to being taught during a law student's legal education. Although objective and reputational factors in the lawyer-client exchange were not examined in the current study, the potential influence of these factors was experimentally controlled. Through presenting an unknown attorney the effects of reputation were controlled, and through videotaping each of the four attorney roles in the same physical setting objective factors of influence were held constant.

Table 1. Attorney Behaviors Associated With Treatment Conditions

Relational skill	Legal competency	
	High	Low
High	Condition A:	Condition B:
	1. Obtains factual data.	1. Takes no information.
	2. Explains court jurisdiction and procedure.	2. No explanation of court jurisdiction or procedure.
	3. Gives practical advice.	3. Gives no practical advice.
	4. Provides appropriate forms.	4. Provides no forms.
	5. Explains relevant case law.	5. Doesn't explain case law.
	6. Introduces self using first name.	6. Introduces self using first name.
	7. Shakes hands.	7. Shakes hands.
	8. Makes small talk.	8. Makes small talk.
	9. Lets client talk.	9. Lets client talk.
	10. Leans forward.	10. Leans forward.
	11. Looks at the client.	11. Looks at the client.
	12. Reflects the client's content and affect.	12. Reflects the client's content and affect.
13. Appears warm, reactive, and animated.	13. Appears warm, reactive, and animated.	
Low	Condition C:	Condition D:
	1. Obtains factual data.	1. Takes no information.
	2. Explains court jurisdiction and procedure.	2. No explanation of court jurisdiction or procedure.
	3. Gives practical advice.	3. Gives no practical advice.
	4. Provides appropriate forms.	4. Provides no forms.
	5. Explains relevant case law.	5. Doesn't explain case law.
	6. Fails to introduce self.	6. Fails to introduce self.
	7. Doesn't shake hands.	7. Doesn't shake hands.
	8. Makes no small talk.	8. Makes no small talk.
	9. Doesn't let client talk.	9. Doesn't let client talk.
	10. Sits back in chair.	10. Sits back in chair.
	11. Doesn't look at client.	11. Doesn't look at client.
	12. Doesn't reflect client's content or affect.	12. Doesn't reflect client's content or affect.
13. Appears distant, aloof and nonreactive.	13. Appears distant, aloof and nonreactive.	

### Subjects and Procedure

Ninety-three subjects were recruited from undergraduate courses in educational psychology. Seventy-three females and 20 males participated with ages ranging from 18 to 32 (mode = 20). Subjects reported to the research room at designated times and viewed the videotape in groups ranging from seven to twelve persons in size; each subject was presented with only one treatment condition. The total number of subjects viewing the various treatment conditions was: A = 22; B = 26; C = 23; and D = 22.

The unequal number of subjects per treatment condition resulted from unequal numbers of subjects reporting for the project at different time slots. Subjects had signed up for participation at designated time periods and variations in the popularity of certain available times resulted in some groups being larger than others.

Table 2. Means and Standard Deviations (by Treatment Condition) and ANOVA F Ratios for all Dependent Variables<sup>a</sup>

Variable <sup>b</sup>		Treatment condition				F Ratios		
		A	B	C	D	Legal competence	Relational skill	Interaction
		$\bar{X}$	$\bar{X}$	$\bar{X}$	$\bar{X}$			
Expertness	$\bar{X}$	65.545	56.500	61.696	33.421	43.405 <sup>c</sup>	26.236 <sup>d</sup>	14.981 <sup>c</sup>
	SD	10.234	14.295	10.894	13.455			
Attractiveness	$\bar{X}$	63.818	60.640	44.864	33.200	8.390 <sup>d</sup>	111.452 <sup>c</sup>	2.933
	SD	8.045	8.831	11.894	9.924			
Trustworthiness	$\bar{X}$	64.045	58.600	54.261	34.800	22.248 <sup>c</sup>	45.426 <sup>c</sup>	7.680 <sup>c</sup>
	SD	9.834	10.492	12.407	11.542			
Client satisfaction	$\bar{X}$	35.182	29.192	24.913	10.182	25.468 <sup>c</sup>	57.225 <sup>c</sup>	5.464 <sup>c</sup>
	SD	9.825	11.634	10.247	4.334			
This lawyer will do all he can to help the client.	$\bar{X}$	4.545	3.840	2.826	1.364	9.781 <sup>d</sup>	37.420 <sup>c</sup>	1.209
	SD	1.738	1.841	1.969	0.658			
I would have confidence in this lawyer.	$\bar{X}$	4.591	3.769	2.696	1.273	10.703 <sup>d</sup>	43.449 <sup>c</sup>	0.882
	SD	1.563	1.840	1.917	0.767			
This lawyer will charge a fair and reasonable fee for his services.	$\bar{X}$	4.227	3.731	3.087	2.091	5.149 <sup>c</sup>	15.101 <sup>c</sup>	0.347
	SD	1.343	1.779	1.857	1.630			
The client will accept and follow this lawyer's advice.	$\bar{X}$	5.591	5.231	4.087	3.091	4.245 <sup>c</sup>	27.214 <sup>c</sup>	0.676
	SD	1.008	1.366	1.881	2.136			
The client should seek a second legal opinion before committing himself to this lawyer. <sup>f</sup>	$\bar{X}$	2.909	2.808	2.435	1.273	3.877	7.432 <sup>d</sup>	1.791
	SD	1.849	1.721	1.854	1.279			
I would recommend this lawyer to a friend in need of a good divorce lawyer.	$\bar{X}$	3.727	3.385	2.217	1.273	3.322	33.325 <sup>c</sup>	1.164
	SD	1.751	1.856	1.506	0.883			
I would recommend this lawyer to a friend in need of a good tax lawyer.	$\bar{X}$	4.091	3.520	2.304	1.409	11.287 <sup>c</sup>	29.875 <sup>c</sup>	3.461
	SD	1.019	1.702	1.609	1.185			
I would recommend this lawyer to a friend in need of a lawyer for any purpose.	$\bar{X}$	4.091	3.520	2.304	1.409	14.742 <sup>c</sup>	34.430 <sup>c</sup>	2.877
	SD	1.377	1.806	1.490	0.959			
If a friend of mine wanted to see a lawyer in order to buy a house, I would recommend this lawyer.	$\bar{X}$	4.182	3.462	3.000	1.409	5.775 <sup>c</sup>	41.311 <sup>c</sup>	0.285
	SD	0.907	1.749	1.624	0.959			
I would consult this lawyer if I had a divorce problem.	$\bar{X}$	3.818	3.115	2.000	1.227	4.634 <sup>c</sup>	25.392 <sup>c</sup>	0.000
	SD	1.816	2.085	1.859	0.752			
I would consult this lawyer if I had a tax problem.	$\bar{X}$	4.318	3.080	2.609	1.545	14.454 <sup>c</sup>	29.571 <sup>c</sup>	0.083
	SD	0.894	1.869	1.559	1.224			
If I were buying or selling a house and wanted to consult a lawyer, I would consult this lawyer.	$\bar{X}$	4.318	3.077	2.391	1.500	13.088 <sup>c</sup>	31.088 <sup>c</sup>	0.485
	SD	0.945	1.917	1.559	1.185			
I would consult this lawyer for any legal problem.	$\bar{X}$	3.955	3.115	2.000	1.045	9.330 <sup>d</sup>	41.702 <sup>c</sup>	0.004
	SD	1.396	2.026	1.477	0.213			

<sup>a</sup>Note: Possible ranges for dependent variables of Expertness, Attractiveness, and Trustworthiness are 12 to 84. The possible range for Client satisfaction is 7 to 49. The midpoint, or neutral score on the respective scales would be 48 and 28. On the thirteen pragmatic questions the possible range is 1 to 7 with the midpoint being 4.

<sup>b</sup>The first four variables given are the main dependent variables discussed in the text, and the remaining thirteen variables reported are the pragmatic questions asked relating to recommending and using the depicted attorney in the future.

<sup>c</sup> $p < .001$

<sup>d</sup> $p < .01$

<sup>e</sup> $p < .05$

<sup>f</sup>This question was asked in the negative (i.e., "The client need not seek a second legal opinion before committing himself to this attorney.").

Describe four personal experiences you have had in your life, as set forth below. Please be as detailed as you can be. These experiences can have occurred at any time from childhood to the present. The only requirement is that they had some impact at the time. These passages may be shared one-on-one in the course of active listening role plays in the coming weeks, but they will not be handed in, nor will they be shared with the class without an individual's consent.

1. Think of a time in your life when you experienced anger at another person.
  - A. What happened?
  - B. Who were the main people involved?
  - C. Did you say what you wanted to that other person? What did you say.
  - D. If not, what did you want to say.
  - E. What would have made the situation right for you?
  - F. What words would you use to describe the other people in this situation?
  
2. Think of a time in your life when you experienced personal loss and/or grief.
  - A. What happened?
  - B. Who were the main people involved?
  - C. Did you say what you wanted to the other people involved? What did you say.
  - D. If not, what did you want to say.
  - E. What would have made the situation right for you?
  - F. What words would you use to describe the other people in this situation?
  
3. Think of a time in your life when you experienced anxiety over loss of control over something that was important to you.
  - A. What happened?
  - B. What was at stake and why was it important to you?
  - C. Did it turn out the way you wanted? If not, why not?
  - D. If not was it because of another person? How did you feel about that?
  - E. What words would you use to describe your experience during the time of uncertainty?
  - F. How do you respond during times of stress/uncertainty/anxiety?
  - G. When was the last time you experienced significant stress/uncertainty/anxiety?
  
4. Think of a time in your life when you were excited about something that was going to happen in the future.
  - A. What was going to happen?
  - B. Who were the main people involved?
  - C. What words would you use to describe your state of mind?
  - D. Were you worried about anything coming along to mess things up? If so, what?
  - E. Did things work out the way you wanted?
  - F. Did you need anyone else's assistance to bring about the result you wanted?
  - G. Who? Did they help? How? Did they disappoint? How?

ANGRY

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

HAPPY

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

SAD

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

EXCITED

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

AFRAID

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

DISAPPOINTED

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

SURPRISED

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

**KEY:**

**1 & 2 = Mild**

**3 = Moderate**

**4 & 5 = Intense**

## Feeling Words

### From Mildest to Strongest Expression

<b>Mad:</b>	<b>Sad:</b>	<b>Glad:</b>	<b>Afraid:</b>	<b>Confused:</b>	<b>Ashamed:</b>
Bothered	Down	At ease	Uneasy	Curious	Uncomfortable
Ruffled	Blue	Secure	Apprehensive	Uncertain	Awkward
Irritated	Somber	Comfortable	Careful	Ambivalent	Clumsy
Displeased	Low	Relaxed	Cautious	Doubtful	Self-conscious
Annoyed	Glum	Contented	Hesitant	Unsettled	Disconcerted
Steamed	Lonely	Optimistic	Tense	Hesitant	Chagrined
Irked	Disappointed	Satisfied	Anxious	Perplexed	Abashed
Perturbed	Worn out	Refreshed	Nervous	Puzzled	Embarrassed
Frustrated	Melancholy	Stimulated	Edgy	Muddled	Flustered
Angry	Down hearted	Pleased	Distressed	Distracted	Sorry
Fed up	Unhappy	Warm	Scared	Flustered	Apologetic
Disgusted	Dissatisfied	Snug	Frightened	Jumbled	Ashamed
Indignant	Gloomy	Happy	Repulsed	Unfocused	Regretful
Ticked off	Mournful	Encouraged	Agitated	Fragmented	Remorseful
Bristling	Grieved	Tickled	Afraid	Dismayed	Guilty
Fuming	Depressed	Proud	Shocked	Insecure	Disgusted
Explosive	Lousy	Cheerful	Alarmed	Dazed	Belittled
Enraged	Crushed	Thrilled	Overwhelmed	Bewildered	Humiliated
Irate	Defeated	Delighted	Frantic	Lost	Violated
Incensed	Dejected	Joyful	Panic stricken	Stunned	Dirty
Burned up	Empty	Elated	Horrified	Chaotic	Mortified
Outraged	Wretched	Exhilarated	Petrified	Torn	Defiled
Furious	Despairing	Overjoyed	Terrified	Baffled	Devastated
Blind rage	Devastated	Ecstatic	Numb	Dumbfounded	Degraded

## REFLECTIVE LISTENING ANALYSIS

Client Statement: Two days ago the most embarrassing thing in my life happened to me. I went to my local drug store to pick up a few items and because my hands were almost full, I stuck a tube of toothpaste in my jacket pocket until I got to the cash register. Well, I paid for everything, but forgot the toothpaste. It was still in my pocket as I was going out the door. Before I even went out of the store into the street, a uniformed security guard came up to me and said out loud, "You're under arrest!" He did that in front of my neighbors and everyone. It was dreadful. I've got a court date next Tuesday and I know I need a lawyer. That's why I'm here.

ATTORNEY RESPONSES	ANALYSIS
<p><b><i>Level 1 Response</i></b>            "The arrest was legal so we may have to place you at the mercy of the court and plead no contest."</p>	
<p><b><i>Level 2 Response</i></b>            "Did you say you were still inside the store when the guard spoke to you?"            ~or~            "You say you paid for your other purchases at the register and that someone stopped you before you got out to the street. Where exactly was it that you were stopped?"</p>	
<p><b><i>Level 3 Response</i></b>            "I can appreciate your embarrassment being publicly accused of shoplifting. While shoplifting is a major problem for businesses, what happened to you could have happened to anybody. We all have momentary lapses of attention that can present us with difficulties. My efforts will be directed at convincing the drugstore that your situation falls into that category."            ~or~            "That's a terrible thing to happen to anybody. Who exactly was with you at this time?"</p>	

<p><b>Level 4 Response</b></p> <p>“Yes, it certainly was awful of the security guard to do that. I can easily understand why you would be embarrassed. I would be too. But now I need to know more about what really happened.. Can you give me more details?</p> <p>~or~</p> <p>“You felt angry at what you believe to be an unjustified accusation by the security guard. Was there anyone around you in the store to whom you may have mentioned in passing that you had no more room in your arms, so you were going to put the toothpaste in your pocket?”</p>	
<p><b>Level 5 Response</b></p> <p>“You sure had an embarrassing experience. Let’s talk about it a little bit more.”</p> <p>~or~</p> <p>“You picked up the toothpaste and intended to pay for it, but then forgot to do so. Then the guard embarrassed you by arresting you in front of all your friends and neighbors and you were upset by this, is that right?”</p>	
<p><b>Level 6 Response</b></p> <p>“After a simple mistake, you’re now faced with an embarrassing arrest and charge for taking something from the store.”</p> <p>~or~</p> <p>“You need a lawyer for something that you really feel you had no intent doing. You felt really terrible and embarrassed, especially in front of your neighbors for having been accused of shoplifting when it was an honest mistake.”</p>	
<p><b>Level 7 Response</b></p> <p>“You must have been mortified when the security guard arrested you in front of everyone for not paying for the tube of toothpaste that you had forgotten you had in your pocket.”</p> <p>~or~</p> <p>“God, you must have felt awfully embarrassed. In front of your neighbors, too!”</p>	

**RULE 2.1**  
**WASHINGTON RULES OF PROFESSIONAL CONDUCT**

1. In representing a client, a lawyer shall exercise \_\_\_\_\_ professional judgment and render \_\_\_\_\_ advice.
  
2. In rendering advice, a lawyer may refer not only to law but to other considerations such as:  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_  
factors, that may be relevant to the client's situation.

Choices on No. 2:

psychological  
moral  
social  
religious  
interpersonal  
economic  
personal  
political

**SOCIAL READJUSTMENT SCALE**  
*(Holmes, T.H. & Rahe, R.H. (1967),  
 Journal of Psychosomatic Research, 11, 213)*

<b><u>LIFE EVENT</u></b>	<b><u>MEAN VALUE</u></b>
1. Death of spouse	100
2. Divorce	73
3. Marital separation from mate	65
4. Detention in jail or other institution	63
5. Death of a close family member	63
6. Major personal injury or illness	53
7. Marriage	50
8. Being fired at work	47
9. Marital reconciliation with mate	45
10. Retirement from work	45
11. Major change in health or behavior of family member	44
12. Pregnancy	40
13. Sexual difficulties	39
14. Gaining new family members (through birth, adoption, oldster moving, etc.)	39
15. Major business readjustment (merger, reorganization, bankruptcy, etc.)	39
16. Major change in financial state (a lot worse or a lot better off than usual)	38
17. Death of a close friend	37
18. Changing to a different line of work	36
19. Major change in the number of arguments with spouse (more or fewer arguments than usual, about child-rearing, personal habits, etc.)	35
20. Taking out a mortgage or loan for a major purchase (home, business, etc.)	31
21. Foreclosure on a mortgage or loan	30
22. Major change in responsibilities at work (promotion, demotion, lateral transfer)	29
23. Son or daughter leaving home (for marriage, to attend college, etc.)	29
24. Trouble with in-laws	29
25. Outstanding personal achievement	28
26. Wife beginning or ceasing work outside the home	26

<u>LIFE EVENT</u>	<u>MEAN VALUE</u>
27. Beginning or ending formal schooling	26
28. Major change in living conditions (building a new home, remodeling, deterioration of home or neighborhood)	25
29. Revision of personal habits (dress, manners, associations, etc.)	24
30. Trouble with boss	23
31. Major change in working hours or conditions	20
32. Change in residence	20
33. Changing to a new school	20
34. Major change in usual type and/or amount of recreation	19
35. Major change in church activities (a lot more or fewer than usual)	19
36. Major change in social activities (clubs, dancing, movies, visiting, etc.)	18
37. Taking out a mortgage or loan for a lesser purchase (for a car, TV, etc.)	17
38. Major change in sleeping habits (a lot more or less sleep, or a change in part of day when sleep occurs)	16
39. Major change in number of family get-togethers (more or fewer than usual)	15
40. Major change in eating habits (a lot more or less food intake or very different meal hours or surroundings)	13
41. Vacation	13
42. Christmas	12
43. Minor violation of the law (traffic tickets, jaywalking, disturbing the peace, etc.)	11

**PROFESSIONAL/PERSONAL MISSION STATEMENT EXERCISE**  
**(Credit to Attorney Terry Leahy/*Ethics From the Inside Out* CLE Program)**

**Part One: Allow Ten Minutes**

1. Instructions<sup>1</sup>

**For each value listed below, circle the number that best reflects the relative importance of that value to you. Pretend that the first number that pops into your head is “the right answer,” quickly circle it, then move on. The numbers have the corresponding meanings:**

- 1. Extremely Important**
- 2. Very Importance**
- 3. Important**
- 4. Non Important**

<b>ACHIEVEMENT</b> (a sense of accomplishment, success or contribution)	1	2	3	4
<b>AMBITIOUS</b> (aspiring to promotion or progress within a career)	1	2	3	4
<b>ADVENTURE</b> (new and challenging experiences)	1	2	3	4
<b>AFFECTION</b> (love, caring)	1	2	3	4
<b>BEAUTY</b> (aesthetics in nature, art or life)	1	2	3	4
<b>BROAD MINDED</b> (open-minded)	1	2	3	4
<b>CHEERFUL</b> (joyful)	1	2	3	4
<b>CLEAN</b> (tidy, sanitary)	1	2	3	4
<b>COMPETENT</b> (capable, effective)	1	2	3	4
<b>COMPETITIVENESS</b> (winning, taking risks)	1	2	3	4
<b>COMFORTABLE LIFE</b> (prosperous or easy life)	1	2	3	4

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<sup>1</sup> Professor Milton Rokeach, in “The Nature of Human Values” identified a list of values, beliefs and personal characteristics. The list which appears here is based upon the list Professor Rokeach came up with.

<b>COOPERATION</b> (working well with others, teamwork)	1	2	3	4
<b>COURAGEOUS</b> (standing up for beliefs)	1	2	3	4
<b>CREATIVITY</b> (being imaginative)	1	2	3	4
<b>DISCIPLINED</b> (self-controlled, restrained)	1	2	3	4
<b>ECONOMIC SECURITY</b> (steady, adequate income)	1	2	3	4
<b>EQUALITY</b> (egalitarianism in life, equal opportunity for all)	1	2	3	4
<b>EXCITING LIFE</b> (a stimulating or challenging life)	1	2	3	4
<b>FAME</b> (being famous, well known)	1	2	3	4
<b>FAMILY HAPPINESS</b> (nuclear and/or extended family that is happy)	1	2	3	4
<b>FAMILY SECURITY</b> (nuclear and/or extended family that is safe)	1	2	3	4
<b>FORGIVING</b> (willing to forget a judgment of others)	1	2	3	4
<b>FREEDOM</b> (independence, autonomy, free choice, self reliant)	1	2	3	4
<b>FRIENDSHIP</b> (close relationships, companionship)	1	2	3	4
<b>HAPPINESS</b> (contentedness)	1	2	3	4
<b>HEALTH</b> (being physically and mentally well)	1	2	3	4
<b>HELPFULNESS</b> (assisting others, improving society)	1	2	3	4
<b>INNER HARMONY</b> (being at peace with yourself)	1	2	3	4
<b>INTEGRITY</b> (honesty, sincerity, genuineness)	1	2	3	4
<b>INVOLVEMENT</b> (participating with others, belonging)	1	2	3	4
<b>INTELLECTUAL</b> (conceptual, abstract or symbolic)	1	2	3	4
<b>LOGIC</b> (being rational)	1	2	3	4
<b>LOVING</b> (affectionate, tender)	1	2	3	4
<b>LOYALTY</b> (duty, respectfulness, obedience)	1	2	3	4

<b>MATURE LOVE</b> (sexual and spiritual intimacy)	1	2	3	4
<b>NATIONAL SECURITY</b> (protection from attack)	1	2	3	4
<b>ORDER</b> (tranquility, stability, conformity)	1	2	3	4
<b>PEACE</b> (a world at peace, without war or conflict)	1	2	3	4
<b>PERSONAL DEVELOPMENT</b> (personal growth)	1	2	3	4
<b>PLEASURE</b> (fun, laughs, an enjoyable, leisurely life style)	1	2	3	4
<b>POLITE</b> (courteous, well-mannered)	1	2	3	4
<b>POWER</b> (control, authority, influence over others)	1	2	3	4
<b>RECOGNITION</b> (social recognition, respect from others, status)	1	2	3	4
<b>RELIGION</b> (strong religious beliefs)	1	2	3	4
<b>RESPONSIBLE</b> (dependable, reliable)	1	2	3	4
<b>SALVATION</b> (eternal peace)	1	2	3	4
<b>SELF-RESPECT</b> (self-esteem, pride, sense of personal identity)	1	2	3	4
<b>WEALTH</b> (making money, getting rich)	1	2	3	4
<b>WISDOM</b> (understanding life, discovering knowledge)	1	2	3	4



**Part Three: Allow Two Minutes *Per Question*/ Ten Minutes Total**

Instructions: In the space provided below, supply the information that is missing. Pretend the first thing that pops into your head is the “right answer” and jot it down. If, after a minute of waiting for something to pop into your head, nothing does, go on to the next question (and come back to the one that stumped you later.) And pretend each question is really, really important (even if, at first, it strikes you as stupid).

4. What I always dreamed of being or doing was
  
5. My three (or more) greatest gifts or talents are
  
6. Three things I feel quite passionate about are
  
7. The most satisfying moment in my professional/educational life so far was when
  
8. What made that moment personally satisfying to me was

**Part Four: Allow Five Minutes**

9. Complete the following sentence:

My mission is to apply my gifts  
(which are \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_)<sup>2</sup>  
in advancing that which I deeply value  
(\_\_\_\_\_ and \_\_\_\_\_)<sup>3</sup>  
in the service of \_\_\_\_\_<sup>4</sup>

---

<sup>2</sup> See your responses to Item 5, above.

<sup>3</sup> See your responses to Item 6, above.

<sup>4</sup> Consider your responses to Item 3, above. Consider, too, persons or groups you deeply desire to serve and/or causes or ideals you deeply wish to advance.

## Beyond the Words: Understanding What Your Client is Really Saying Makes for Successful Lawyering

by Steven Keeva

If lawyers were a species unto themselves — and many people are convinced they are — some of their skills would be studied as near-miracles of adaptation.

Think for a moment about a lawyer's ability to listen. Like a falcon that scours the ground from dizzying heights, spots something moving and instantly determines its mealworthiness, a lawyer scans the environment for information, captures it, analyzes it and uses it to build a case to solve the problem at hand.

Unfortunately, while this process is going on inside the lawyer's head, the client may be sitting across the desk feeling lost.

She doesn't know whether she's been seen. She isn't sure whether she has recounted everything relevant. And worse, she's wondering whether she and her lawyer are occupying the same psychic space. Or even the same planet.

Law practice is all about words, whether they are used to persuade or explain. For a variety of reasons — most unintentional — words often end up, instead, keeping lawyers and clients at a distance. When that happens, something essential is lost: the lawyer's opportunity to experience the satisfaction that comes from connecting with — and helping — another human being.

Lawyers who make it a point to really listen understand that too much talking and not enough listening throws things off balance. They realize that listening is how they bring a client's world into their own. When more of that world gets in, their chances of being successful counselors and advocates increase.

Listening this way also happens to be

good business. In a profession in which most practitioners are pretty strong technically, being a good listener can be a way to distinguish yourself.

**To put it into the law office context, if a client needs to be heard, merely listening to the words while tuning out the person behind the problem will rarely do the trick.**

### The Need to Be Heard

Intuition tells us that having the feeling of being heard is an important component of happiness. If you need proof, science can provide it.

In one of the better-known studies, James J. Lynch, author of *The Language of the Heart: The Body's Response to Human Dialogue*, found that when we listen to people, their blood pressure goes down. Lynch understood this when he noticed that crying babies' blood pressure continued to rise the longer they cried.

"I realized that's exactly what the adult patients [do], but their cries are inward," he says. "And I began to understand that listening to people lowers their blood pressure because we hear their cries."

The importance of listening to those cries is something James Nelson, a former chief judge of the Los Angeles Municipal Court, learned about his first day on the bench, in Small Claims Court.

"I had a case in which a lady had sued a dry cleaner for damaging her clothing," he recalls. "Well, when she got through presenting her case, I wasn't even clear about whether or not she was even suing the right dry cleaner. She just didn't seem to have a case.

"So as soon as she was done, I said the

judgment was for the defendant. At that point, the dry cleaner almost attacked me. I thought he was going to jump over the bench and grab me, so I said, 'Sir, sir, I just ruled in your favor. The case is over.' But he was furious. He said, 'I wanted to tell you about what this woman did!' And at that moment I realized that most people would rather be heard than win. There is some kind of spiritual principle involved in hearing people."

Maybe the principle is that although adjudication may cure a legal problem, healing requires that the parties feel they have actually been heard. To put it into the law office context, if a client needs to be heard, merely listening to the words while tuning out the person behind the problem will rarely do the trick.

### How Busy Lawyers Listen

If there were such a thing as a distraction index, it would probably be off the charts these days, reflecting overscheduled days and constant demands that have to be met this instant.

It happens to everyone, so it isn't fair to single out lawyers for failing to be good listeners. They are probably no worse at it than other professionals. After all, their work requires that they listen, and listen well — at least up to a point.

Merrilyn Astin-Tarlton, a law-firm management consultant who also teaches at the University of Denver College of Law, says, "Lawyers constantly listen and analyze what they're hearing, but only until they get to the point where they think to themselves, 'Ah, I know the answer.' Then they don't hear what comes next."

Tarlton says certain unique factors in

lawyers' training and legal culture make it especially hard for them to listen beyond that moment. First, they are trained in law school and in practice that people come to them for one thing: to get answers. Given that, "It's easy to get into a pattern where you want to know the answer really fast," says Tarlton.

Add to that the fact that the Socratic method used in law schools conveys a simple message: He who knows the answer gets the prize — and, Tarlton says, it is no wonder that lawyers tend to listen with a narrow focus on getting the right answer. There appears to be little incentive to listen any deeper or longer than necessary to do that.

But is there? It depends on how you perceive your role as a lawyer. "I believe that when a client goes to see a lawyer, he or she wants more than just a legal fix," says David Hall, assistant provost of Boston's Northeastern University and former dean of the law school there.

"When I go to the store to buy a loaf of bread, I want to be treated a certain way by the cashier, and when he doesn't look me in the eye and say hello, or acknowledge my presence, I feel diminished by the experience. And I'm not coming to him in crisis, hurting over something that has gone wrong in my life, the way I would with a lawyer."

Surveys have repeatedly shown that clients look for more than technical proficiency from a lawyer. They want to know that the lawyer hears and cares about their problems. In fact, a great many lawyer disciplinary actions can be traced to a failure to listen. After all, when clients complain that their lawyers refuse to return phone calls, aren't they really saying that they don't feel heard?

#### What to Listen For

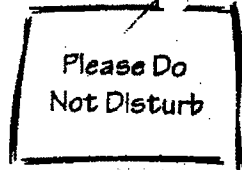
When it comes to working with clients, really listening means much more than accepting a list of facts at face value, finding a recognizable pattern, and plugging it into a standard solution. It also means:

- **Listening through role-playing.** Clients often behave according to some notion of how a client is supposed to behave. If you can detect this, and realize that such suppositions become filters —

## HEARING AIDS FOR LAWYERS

In any conversation, there are ways to be a better listener. Here are a few:

- **Stop talking.** It's much easier to receive information when you're not also transmitting it.
- **Allow the room to be silent.** When you resist the temptation to fill the silence, you make room for what often turn out to be significant revelations.
- **Limit distractions.** Block incoming phone calls, move to a quieter room, or put a "Do Not Disturb" sign on your office door.
- **Listen with the intention of understanding,** instead of replying.
- **Be aware of the message your body and your face are sending to the speaker.**
- **Listen for meaning in a variety of cues —** not only in words, but also in the way the speaker says them, in body language, and in what he or she is not saying.
- **Tell yourself that nothing else matters at the moment but what the speaker is trying to say to you.**



allowing only certain things to be expressed and others withheld — you have a chance to get at underlying facts and feelings that might bear on the case.

- **Listening for a better way to do things.** If you stop as soon as you've got the answer, you may be closing yourself off to better options. Perhaps the client has a way to resolve the problem that is outside your experience but may be effective. Don't ignore the client's wisdom in your rush to get the right answer.

- **Listening to your intuition.** The legal culture doesn't exactly embrace this source of knowledge, but that doesn't mean your hunches and inklings shouldn't be respected and explored. If your gut tells you something is wrong with the picture, listen and check it out.

- **Listening for clients' listening problems.** Clients who don't listen can be maddening. They fail to give useful feedback and they waste time. Being aware of this problem early in the relationship gives you the opportunity to deal with it — directly and with tact — before it leads to abject frustration.

In an interesting twist on this suggestion, Tarlton, the Denver consultant, describes an extremely bright client of hers, a managing partner she admires and with whom she often works.

"But sometimes he just stops listening. I can see him go away. So periodically I'll have to say, 'I know you're finished listening to me, but I have information I need to convey and I need you to listen.'" He does, and, says Tarlton, he loves it when she calls his attention to it. Keep in mind that encouraging clients to become better listeners can pay off. Their experience causes them to pick up on different nuances than you do, nuances you might miss that could prove decisive.

One rule to remember when your goal is to listen deeply is that judgment is deadly. No one wants to be judged while revealing personal information, so it is essential to offer the speaker a sympathetic, nonjudgmental ear.

The trick is to be aware of any tendency to judge the speaker's ideas, use of language, appearance, or anything else. If you find yourself judging, don't berate yourself, simply acknowledge (to yourself) that you're doing it and let go of the judgment so that you can turn your attention to the speaker and the message.

#### It Takes Time

Merit Bennett, author of *Law and the Heart* and a partner at the law firm of Tinkler & Bennett in Santa Fe, New Mexico, says he encourages clients to "tal

themselves out."

"I will let them talk and I'll ask questions to help them get what they came to say out," he says. "But I'll also allow them to explore how they feel about what they just said."

That, Bennett says, is where the gold is.

"They come in with facts and ideas and behavior and all the rest, and after it's all on the table, it's easy for me to play the lawyer and figure out what the legal issue is, analyze it, come up with a course of action and so on. But what happens behind that — and usually it's in a place the client has not gone — is how they feel about it, about the conduct of the other party, about what happened to them, and about what kind of an outcome would give them a good feeling.

"Once you go there, it's like you've opened up the door and the answer just comes," Bennett says. "It comes right out of the client's mouth. Suddenly you see what the real issue is. It's usually not what they came in with. Usually it's about hurt, and I get them to talk about why they are hurt, how to get at it and how to heal it. Suddenly it resolves itself at a whole other level."

Bennett has learned it can be dangerous to push a client toward a result without listening to all the subtleties of what is being said. "If you do push too quickly into the case, and you fail to get to the feelings and the underlying issues, the case will often fall apart down the line," he says. "It may happen when the other side makes a motion for summary judgment, and it's because you didn't go far enough — you didn't listen well enough at the outset. I'm really careful with this, and I guess it comes from the fact that in my younger days I was burned too many times by jumping on people's horses, then getting too far out on the prairie and finding myself surrounded."

There is significant danger, Bennett says, in simply accepting what the client initially tells you, which ordinarily is limited to what supports his or her position and justifies a desire to get back at the other guy. "When you don't explore the underlying feelings, you often don't reach the underlying facts. So getting to that

level — by really listening well — is another way to make sure you develop the factual scenario so that nothing unforeseen happens."

Listening well takes effort. But according to psychologist Lynch, it is also deeply satisfying and relaxing. His research shows that not only does listening to people lower their blood pressure, it also lowers the listener's.

There is something about forging the kind of basic human connection that

good listening makes possible that calms and comforts everyone. Any fears that it will deplete your energy available for the rest of your law practice — if you're listening openly — are misplaced. *EA*

*Steven Keeva is a senior editor of the ABA Journal. His e-mail address is skeeva@staff.abanet.org.*

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## We're Turning a Few Heads.



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## Curiosity

About 15 years ago, when I was dean of students at the University of California, Davis, School of Medicine, yet another of the periodic paroxysms of "holism" in medicine occurred. Several importunate politicians called to tell me that, in their opinion—which presumably reflected that of their constituents—medical students, by selection or by their isolation by the medical curriculum, were insensitive, mechanistic, technocratic, inhumane brutes. The solution, these politicians insisted, was the intercalation of humanities courses into an already crowded curriculum.

I had several concerns about this. The first was that the addition of required courses in literature, drama, sociology, music, and art might actually limit students' opportunities to read, go to the theater, be with friends and family, and attend a symphony or museum. Even if one argues that students would not have done these things anyway—possessed as they were by the intricacies of glucose metabolism—the addition of these courses would cut down on contemplative time, volunteerism in free clinics, hobbies, and sleep. Second, I wondered what evidence supported the idea that being well versed in the humanities made one more humane. I was encouraged in my skepticism by the knowledge that perhaps the most broadly educated of physicians at the beginning of this century practiced in Germany. Moreover, I could not understand why science—a most human pursuit, the exercise of which is one of the defining characteristics of our species—should make students "inhumane." I decided to do a "scientific" study of the effects of humanities courses on humaneness in medical students.

Several colleagues and I read more than 10 years' worth of the subjective descriptions of performance of third- and fourth-year medical students on their clinical clerkships. We looked for adjectives suggesting humane behavior: "caring," "warm," "concerned," "good with patients and families." Each of these descriptors got "nice" points. Words like "callous," "abrupt," and "arrogant" got subtraction points. Then we compared "nice" points to the total number of units taken in the humanities in the student's premedical career.

What a shock: We found a direct correlation. I still thought it did not make sense. These were adults, after all. Was fundamental character, which is usually well formed by adolescence, changed by a

class? I did what confused scientists have done for centuries to nonconforming data: I reanalyzed them. This time I ran a correlation between "nice" points and premedical units taken in science. Surprise again! Another direct correlation. Those students who had taken the most units in science had the highest number of "nice" points. In fact, in this idiot-driven experiment, "niceness" correlated directly with the total number of course units taken, regardless of the category.

What did it all mean? I did not know, but I wondered: What is kindness, as perceived by patients? Perhaps it is curiosity: "How are you? Who are you? How can I help you? Tell me more. Isn't that interesting?" And patients say, "He asked me a lot of questions"; "She really seemed to care about what was going on with me." Is curiosity the same, in some cases, as caring?

Curiosity is the urge to investigate, to discover. It can be seen in all small mammals; just watch a kitten explore a paper bag. Evidently, although curiosity can be dangerous ("What's down this dark hole, I wonder? What does this bright pill taste like? What's the funny-looking black animal with the white stripe down its back?"), it also has a redemptive adaptive function that exceeds the risks. Otherwise, puppies and small children would be wiped out. Curiosity is how we learn about our world.

Dr. Erich Loewy, in an unpublished paper, points out that curiosity, this primal "wonderment" that stimulates exploration, engages both imagination (conceiving the alternative explanations of new phenomena) and intelligence (mapping out the best way to determine which explanation is likeliest). Both imagination and intelligence are integral to humanities, science, and the synthesis of the two, which is clinical medicine. Rather than stating that the study of humanities makes one humane, I propose that humane people are curious and therefore choose to explore the humanities as well as the sciences.

An endowed lectureship at my medical school allows us to invite Nobel Prize-winning scientists to visit and lecture for several days. What impressed me most about my conversations with these luminaries was the extraordinarily broad range of their interests, their enthusiasm, and their thought patterns. One thinks science has a sequential and controlled pattern of logical ideas, firmly grounded in antecedent principles and constantly cleansed of intellectual debris by the abrasion of skepticism. Listening to Nobel laureates in medicine was revela-

This paper is also available at <http://www.acponline.org>.

tory. No linear thought here. They uninhibitedly threw forth multiple ideas in their observations, the connections between which were often invisible to me. As if the ideas were the small bright stones of a mosaic, forming many possible pictures, these scientists looked at them and rearranged them until they found a picture they liked. Dr. Baruch Blumberg, for example, explaining how he found the hepatitis B virus, told me stories of Australian aborigines, roof thatch, wombats, guitars, bedbugs, the Babylonian Talmud, and manned space flight. No doubt the disciplined thought of scientific proof came later.

The scientists seemed oblivious to intellectual constraints and unconcerned about being seen as naive or unknowledgeable. I suppose being a Nobel laureate means that one has little left to prove of one's adequacies as a thinker, but I have no doubt that these thought patterns preceded and were the reason for these people's Nobel Prize-winning discoveries, not a consequence of the prize. Curiosity without constraint, no preconceived image to emulate, no need for the facade of competence, opening inquiry into any area that stimulated their interest—these qualities seemed common to them all.

In fact, the best clinical diagnostic thinking is more like the forming of a mosaic than linear thinking: It requires the physician to constantly alter diagnoses as each new piece of data enters the picture. One conceives constantly of many possible diagnoses, narrows down, reexpands, and generates an ever-evolving flux of ideas; the more information gained from patients, the better. For example, a 30-year-old woman with shortness of breath and fever (maybe a virus: pneumonia, of course) for 3 months (tuberculosis, multiple pulmonary emboli, lupus, sarcoidosis) recently returned from India (malaria, hepatic abscess, weird tropical disease) where she was visiting her mother, who was dying of breast cancer (anxiety; metastases from breast, ovarian, or colonic cancer; maybe she visited a guru and got toxic herbal medications), and so on.

What does curiosity have to do with the humanistic practice of medicine? Couldn't it just convert patients into objects of analysis? I believe that it is curiosity that converts strangers (the objects of analysis) into people we can empathize with. To participate in the feelings and ideas of one's patients—to empathize—one must be curious enough to know the patients: their characters, cultures, spiritual and physical responses, hopes, past, and social surrounds. Truly curious people go beyond science into art, history, literature, and language as part of the practice of medicine. Both the science and the art of medicine are advanced by curiosity.

One problem for medical students and physicians is that they must already have two things before engaging in uninhibited curiosity: a sense of com-

petence (without which one tries to cultivate the appearance of competence, which generally means having more answers than questions) and time to think. The former is threatened by modern medical education and the latter by modern medical practice.

How is curiosity suppressed in medical students and physicians? It is. I have discovered, in nonclinical settings, that students who, on the wards, seem totally without curiosity or culture—dolts, in short—were, in their private worlds, avid poets, artists, musicians, and craftspersons of exquisite skill, vitally interested in a wide range of topics. They just did not think it wise to let anyone know because they had received a message from housestaff, faculty, or peers that interest in anything other than purely biological medicine was inappropriate for a medical student.

Medical education itself suppresses the expression of curiosity, emphasizing examinable facts rather than more ineffable thought processes in order to provide reproducible experiences for students. It may even substitute virtual patients (case discussions, simulations, CD-ROMs, and syllabi) for real ones. Patients languish on the wards wondering who their physicians are while their physicians discuss abstract patients in small rooms or play diagnostic games on the computer. Acting as a preceptor to second-year students, I discovered to my dismay that they gave up a physical diagnosis session to study for the written examination in physical diagnosis. Does this make sense?

Efficiency, in which patients are seen as "work units," also suppresses curiosity. One senior resident once presented a patient in morning report and, as part of the physical examination, mentioned a scar in the patient's groin. When I asked how the scar had been acquired, she said, "He told me he was bitten by a snake there."

"How did that happen?" I asked.

"I don't know," she said.

How could that be? How could one not ask? The imagination runs riot with the possibilities of how this man got bitten by a snake in the groin. But the resident was too busy (or not curious enough) to ask!

The sacrosanctity of print and the ancient human belief that what is written is more true than what is said suppress curiosity. A third-year student presenting a patient to me at the bedside told me that the patient had had "BKA [below-knee amputation] times two." Standing there, I saw that the patient had legs. I asked the student, "Did you find legs on your physical examination?"

"Yes," he said.

"How then did he have bilateral below-the-knee amputations?" The student was confounded. He could not understand it. He was struck mute. He reached out and touched the legs: warm, hairy, clearly the patient's own and not prosthetics.

"I don't know," he said.

"What makes you think the patient had bilateral below-the-knee amputations?"

"It said so in the chart." We got the chart, and indeed, for this patient's past three admissions, "BKA times two" was listed under history. It was only after looking at the past five admissions that the transcriptionist's error became clear. The patient had been previously admitted twice for diabetic ketoacidosis—DKA. But once typed, BKA became enshrined chart lore and was repeated by every subsequent house officer as if it were true, even in the face of the evidence of their own senses.

Technology is wonderful and seductive, but when seen as more real than the person to whom it is applied, it may also suppress curiosity. When I was a house officer and installing one of the first right-heart catheters, the machine that showed intrapulmonic arterial pressures was enormous and was equipped with strain gauges rather than computer chips. Making it work was difficult. After the line was in, the attending, the nurse, and I tried desperately to adjust the machine to show the pulmonary arterial pressure waves. We could not get them. The line on the screen remained flat. We manipulated toggle switches and strain gauges for about 15 minutes. Nothing. Finally, I glanced at the patient: He was dead. We had been so engaged with the machine that we had missed this significant clinical event, which explained why the pulmonary arterial pressures were unobtainable. We assumed that the answer to the question lay in the machine and explored no further until it was too late.

What is the reward of curiosity? To the patient, it is the interest and physical propinquity of the physicians, which is therapeutic in and of itself. To the physician, curiosity leads not only to diagnoses but to great stories and memories, those irreplaceable "moments in medicine" that we all live for. When I was a young attending at San Francisco General Hospital, morning rounds usually consisted of briefly going over the 15 or 20 patients admitted to the team the night before and then concentrating on the "interesting" ones. I was righteous and was determined to teach the housestaff that there were no uninteresting patients, so I asked the resident to pick the dullest.

He chose an old woman admitted out of compassion because she had been evicted from her apartment and had nowhere else to go. She had no real medical history but was simply suffering from the depredations of antiquity and abandonment. I led the protesting group of housestaff to her bedside. She was monosyllabic in her responses and gave a history of no substantive content. Nothing, it seemed, had ever really happened to her. She had lived a singularly unexciting life as a hotel maid. She

could not even (or would not) tell stories of famous people caught in her hotel in awkward situations. I was getting desperate; it did seem that this woman was truly uninteresting. Finally, I asked her how long she had lived in San Francisco.

"Years and years," she said.

Was she here for the earthquake?

No, she came after.

Where did she come from?

Ireland.

When did she come?

1912.

Had she ever been to a hospital before?

Once.

How did that happen?

Well, she had broken her arm.

How had she broken her arm?

A trunk fell on it.

A trunk?

Yes.

What kind of trunk?

A steamer trunk.

How did that happen?

The boat lurched.

The boat?

The boat that was carrying her to America.

Why did the boat lurch?

It hit the iceberg.

Oh! What was the name of the boat?

The Titanic.

She had been a steerage passenger on the Titanic when it hit the iceberg. She was injured, made it to the lifeboats, and was taken to a clinic on landing, where her broken arm was set. She now was no longer boring and immediately became an object of immense interest to the local newspapers and television stations—and the housestaff.

For whatever reason—economics, efficiency, increased demands on physicians for documentation, technology, or the separation of education from patient care—curiosity in physicians is at risk. I believe it is our duty, as those who now teach young physicians, to identify medical students with a gift for curiosity and take infinite pains not to suppress but to encourage that gift. Not only will patient care be enriched, but so will the lives of these physicians and the vigor of our art and science. Besides, it will be much more interesting.

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